

### **Remarks**

Claims 1-24 are presently pending in the subject application. Reconsideration and allowance in view of the above amendments and the following remarks are respectfully requested.

The title of the invention has been amended herein to reflect amendments to the claims.

Claim 1 has been amended herein to recite that the claimed cap is frictionally fitted onto an open end of a fluid-holding vessel to form a sealed collection device. Support for this amendment can be found in the specification *passim* and at, for example, page 2, lines 7-9.

Claim 2 has been amended to indicate that the cap is in threaded engagement with the vessel. Support for this amendment can be found in the specification at, for example, page 40, lines 9-16.

Claim 6 has been amended herein to specify that the recited wick is an absorbent wick. Support for this amendment can be found in the specification at, for example, page 16, lines 17-23.

In view of the amendments to claim 1, claim 26 has been canceled herein without prejudice to the prosecution of the subject matter of these claims in this or a continuing application.

### **Prior Art Rejections**

The claims stand rejected by the Examiner under 35 U.S.C. §§ 102(b) and 103(a) as either being anticipated by Koch *et al.* (U.S. Pat. No. 5,578,272) or unpatentable over Koch in combination with Percarpio (U.S. Pat. No. 4,338,764) or Sandhage (U.S. Pat. No. 2,906,423). To support these rejections, it has been observed that Koch discloses a plastic cap having slots, which the Examiner contends constitute striations having a thickness. What Koch in fact discloses, and Figure 9 illustrates, are slots 94, 95 (openings rather than striations) formed in a conical wall 85 of a closure 34 to vent air from an associated container 31 during a pipetting operation. *See* Koch at col. 4, lines 17-24. Thus, the slots of Koch's closure 34 do not have a thickness (to have a "thickness," **object** must have a dimension between two defining surfaces), nor do the slotted closure 34 and the associated container 31 of Koch constitute a "sealed" collection device, as presently claimed (the slotted closure 34 provides fluid communication between the container 31 and ambient air).

**Double Patenting Rejections**

Claims 1-24 stand provisionally rejected by the Examiner on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. application Serial No. 11/928,866 and claims 1-11 of U.S. application Serial No. 11/926,665. As these are provisional rejections, and the claims of the instant application are otherwise believed to be in condition for allowance, withdrawal of these rejections are respectfully requested.

Claim 26 stands provisionally rejected by the Examiner on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-22 of U.S. application Serial No. 11/928,866. As this is a provisional rejection, and the claims of the instant application are otherwise believed to be in condition for allowance, withdrawal of this rejection is respectfully requested.

For the reasons set forth above, Applicants submit that the presently pending claims are fully patentable in view of the cited references. Accordingly, withdrawal of the Examiner's Section 102 and 103 rejections is hereby respectfully requested.

**Conclusion**

Based on the amendments and remarks above, Applicants submit that the presently pending claims are in condition for allowance and notice to that effect is hereby respectfully requested.

Reply Under 37 C.F.R. § 1.111  
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No fee is believed due in connection with this Reply. If Applicants are mistaken, then please charge any amounts due to Deposit Account No. 07-0835 in the name of Gen-Probe Incorporated.

Respectfully submitted,

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